

REMARKS

Applicants have carefully reviewed the Final Office Action dated July 29, 2008, prior to preparing this response. Currently, claims 51 and 52 are pending in the application, wherein claims 51 and 52 have been rejected. Favorable consideration of the following remarks is respectfully requested.

Claims 51 and 52 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Samson, U.S. Patent No. 5,702,373 in view of Andersen et al, U.S. Patent No. 5,662,713. Applicants respectfully traverse this rejection.

Independent claim 51 recites:

51. A catheter comprising an elongate tubular member having a proximal end, a distal end, and a passageway defining a lumen extending between those ends, said elongate tubular member comprising:

a relatively stiff proximal segment including an inner proximal liner, an outer proximal cover, and a braid interposed between the inner proximal liner and the outer proximal cover; and

a relatively flexible distal segment comprising a knit tubular member and an inner tubular liner in coaxial relationship with the knit tubular member, wherein the knit tubular member is formed from a single strand, wherein the single strand forms a plurality of up loops and a plurality of down loops, wherein the plurality of up loops of the single strand interlock with the plurality of down loops of the single strand;

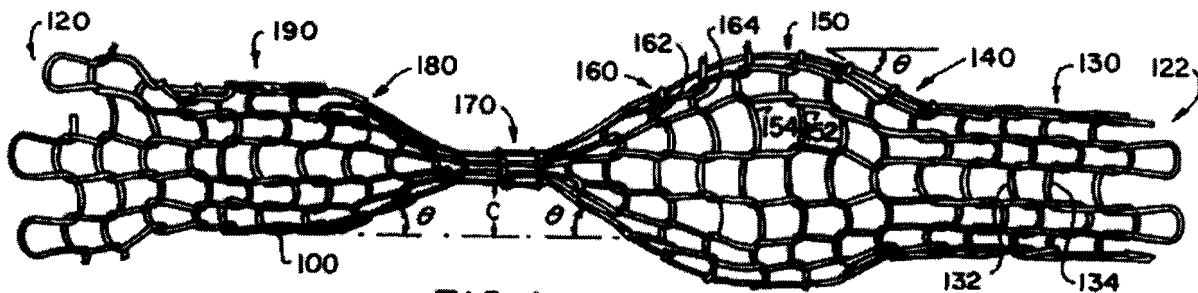
wherein the knit tubular member is generally not radially expandable.

Nowhere do Samson or Andersen et al., either alone or in combination, teach or suggest “the knit tubular member is generally not radially expandable,” as currently claimed. Independent claim 52 also includes similar limitations.

Instead, Andersen et al., which the Examiner relies on for its teaching of a knit made of single fiber, teach a stent for reinforcement of the lumen of a peristaltic organ, such as the esophagus. Andersen et al. teach the stent is formed by knitting a wire into a pattern of overlapping loops such that in a relaxed state each row of loops may shift axially relative to and independent of the rows on either side accommodating peristalsis of the organ. See Abstract. This movement allows the stent to be placed into the lumen of a peristaltic organ without the stent migrating within the organ. Thus, Andersen et al. need the stent to be capable of expansion and contraction in order for the device to function as intended. Andersen et al. teach at column 3, line 65 through column 4, line 7:

The rows of loops of the stent shift axially with elastic deformation of the wire of the loops so that the separation of the heads increases to a loop lengths l_1 , as shown in FIG. 1e. In the region of maximum expansion 150, the length of each portion of the esophagus returns to its rest length, but the diameter is extended. The knit loops of the stent can widen, as shown in FIG. 1f, to accommodate this extension. Returning again to considering any peristaltic organ, the organ contracts (c of FIG. 1c) to compress a region.

FIG. 1c of Andersen et al. has been reproduced below to facilitate the discussion.



Andersen et al. intends the stent to radially expand and contract as shown in Figure 1c above. Further, while FIG. 9 of Andersen et al. shows the stent in a delivery position while disposed within a catheter, this is for the delivery of the stent to the desired location. Once the stent is deployed from the delivery catheter, the stent radially expands. Thus the stent is indeed expandable, as this feature is necessary for the stent to function properly as discussed in Andersen et al. Andersen et al. teach away from the claimed invention. As the Examiner is aware, MPEP §2141.02 VI states, “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).”

Further, the Examiner asserts, “It would have been obvious to one of ordinary skill in the art at the time the invention was made to form a knit from a single strand as taught by Andersen.” The Supreme Court in *KSR Int'l Co. v. Teleflex Inc.* quotes *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”. Emphasis added; see page 14 of the April 30, 2007 decision. The Court further stated, “a patent composed of several elements is

not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” See page 14 of the April 30, 2007 decision. As discussed in the previous amendment, Samson is not believed to teach a knit. Samson teaches that the component denoted with reference number 244 is an inner braid of the catheter shown in FIG. 7. See Samson, at column 13, lines 45-61.

Samson is quite clear when describing a braid as indicated by the description when it is stated:

Whenever I use the term “braid” herein, I mean tubular constructions in which the ribbons making up the construction are woven in an in-and-out fashion as they cross to form a tubular member defining a single lumen. The braids may be made up of a suitable number of ribbons, typically six or more.

Samson, at column 12, lines 15-20 (emphasis added).

Thus, it is unclear why one of ordinary skill in the art would be motivated to combine the teaching of Samson and Andersen et al., as Samson is not believed to teach a knit. Even if one were to combine the teachings of Samson and Andersen et al., one would not arrive at the device as claimed. Reconsideration and withdrawal of the rejection are respectfully requested.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

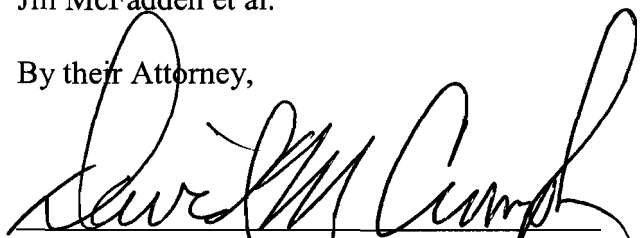
Respectfully submitted,

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By their Attorney,

Date: _____

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